

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Gas Market Activities of Southern California Gas Company, San Diego Gas and Electric, Southwest Gas, Pacific Gas and Electric, and Southern California Edison and their impact on the Gas Price Spikes experienced at the California Border from March 2000 through May 2001.

Investigation 02-11-040
(Filed November 21, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING THE UTILITY REFORM NETWORK'S
NOTICE OF INTENT TO CLAIM COMPENSATION**

Summary

This ruling responds to The Utility Reform Network's (TURN) notice of intent (NOI) to claim compensation in this proceeding. After consultation with the assigned Commissioner, I find TURN eligible for compensation pursuant to Pub. Util. Code § 1804.¹

NOI Requirements

Timely Filing

Under § 1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." The prehearing conference in this proceeding occurred on

January 9, 2003. The due date for NOIs was February 10, 2003. Since TURN filed its NOI on the due date, its NOI is timely.

Customer Status

Pursuant to Decision (D.) 98-04-059, this ruling must determine whether the intervenor is a customer, as defined in § 1802(b), and identify whether the intervenor is (1) a participant representing consumers, (2) a representative authorized by a customer, or (3) a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.

TURN meets the third definition of customer, as set forth in § 1802(b): it is an organization authorized by its articles of incorporation² to represent the interests of consumers, a portion of which are residential customers.

Significant Financial Hardship

Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the customer may make the required showing in the request for an award of compensation.

¹ All statutory references are to the Public Utilities Code.

² D.98-04-059 directed intervenors either to file their articles of incorporation with the NOI, or to provide a reference to a previous filing. *Id.* at 30. TURN chose the latter alternative, referring to articles of incorporation it filed with its NOI in Application (A.) 98-02-017 and again in A.99-12-024. TURN has approximately 30,000 dues paying members, the majority of which it believes to be residential ratepayers. TURN does not poll its members to determine whether they are residents or small businesses, so no percentage split is available as required by D.98-04-059, Finding of Fact 12.

“Significant financial hardship” means (1) either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, (2) or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. Section 1802(g).

In order to determine whether TURN is eligible for compensation, we must find that the economic interest of the individual members of the TURN is small in comparison to the costs of effective participation in the proceeding. TURN has elected not to make that showing here. Instead, it relies on a rebuttable presumption of eligibility: Assigned Administrative Law Judge (ALJ) Barnett found that TURN had satisfied the significant financial hardship test on December 19, 2001 in A.01-09-003. The present proceeding commenced on November 21, 2002, within one year of the A.01-09-003 finding. Therefore, in accordance with § 1804(b)(1), the rebuttable presumption created in A.01-09-003 is applicable here. If any party attempts to rebut this presumption, TURN is granted leave to furnish evidence of its significant financial hardship within 10 days of the rebuttal’s filing.

Nature and Extent of Planned Participation

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer’s planned participation in the proceeding to the extent this can be predicted. TURN states that it does not anticipate that it will perform a comprehensive investigation and analysis of the “myriad of natural and market forces which impacted gas prices” during the period covered by the investigation. TURN intends to closely monitor the proceeding, and has

not yet determined whether it will hire consultants to provide expert analysis and testimony.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. TURN notes that the proceeding has been bifurcated to separately address issues for different respondents, and states that it is very difficult to estimate the extent and cost of TURN's participation. Based on an assumption of rather limited participation, TURN estimates the following as potential compensation amounts:

Amount	Description
\$36,000	160 hours of professional time by TURN attorney Marcel Harwiger at \$225/hour (proposed)
\$15,400	40 hours of professional time by TURN attorney Michel Florio at \$385/hour (proposed)
\$10,000	Consultant expenses for JBS Energy
\$ 3,500	Other direct expenses
\$64,900	Total

TURN satisfactorily presents an itemized estimate of the compensation it expects to request. TURN's statement that it plans to "closely monitor" the proceeding does not explain how it plans to make a substantial contribution. As must any intervenor, TURN must fully support its request for compensation, including substantiating that it has made a substantial contribution, and the reasonableness of the hours spent and hourly rates.

IT IS RULED that:

1. The Utility Reform Network (TURN) has met the eligibility requirements of Pub. Util. Code § 1804(a). TURN is a customer as that term is defined in § 1802(b) and is a group or organization that is authorized to represent the interests of residential ratepayers.

2. TURN has established a rebuttable presumption of significant financial hardship. If any party attempts to rebut the presumption, TURN is granted leave to establish its significant financial hardship within 10 days of the rebuttal's filing.

3. A finding of eligibility in no way assures compensation.

Dated March 7, 2003, at San Francisco, California.

/s/ Charlotte Terkeurst
Charlotte Terkeurst
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding The Utility Reform Network's Notice of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated March 7, 2003, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

